

BOARD OF APPEALS CASE NO. 063	*	BEFORE THE
APPLICANT: BLC Properties, Inc.	*	ZONING HEARING EXAMINER
REQUEST: Rezone 175.477 acres from GI District classification to R3 District classification; Old Philadelphia Road, west of Stepney Road, Aberdeen	*	OF HARFORD COUNTY
	*	Hearing Advertised
	*	Aegis: 3/1/95 & 3/8/95
HEARING DATE: June 5, 1995	*	Record: 3/3/95 & 3/10/95
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ZONING HEARING EXAMINER'S AMENDED DECISION

The Applicant, BLC Properties, Inc. is seeking a rezoning of the subject parcel from GI General Industrial to R3 Urban Residential. The Applicant justifies the request on the basis of "mistake" made during the 1989 comprehensive zoning review.

The subject parcel consists of 175.477 acres located on Old Philadelphia Road west of Stepney Road and is part of the Riverside complex. The property is more particularly identified on Tax Map 62, Grid 1F, Parcel 60. The subject parcel is presently zoned GI and is located entirely within the First Election District.

Mr. John Dixon testified on behalf of the Applicant and indicated that the subject property had been zoned R3 prior to the 1989 comprehensive zoning review, however, at the request of the Bata Land Company, predecessor of the Applicant, the County Council approved a rezoning request in 1989 changing the designation of the parcel from R3 to GI. The witness indicated that it was the objective of Bata Land Company, in 1989, to create large industrial lots which could be sold. Additionally, the witness explained that Bata had made other requests on other parcels during the 1989 comprehensive zoning process and that this parcel was just one of them.

The witness stated that BLC has been unable to sell any of these lots since the rezoning occurred in 1989. Among the difficulties encountered with the property since 1989 was the delineation of wetlands and critical areas on the subject site which has reduced the development envelope from 175 acres to 82.8 acres. These wetlands were not delineated until 1990.

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Based on the topography and later discovered wetlands, only small sites could be developed on the property instead of the large ones contemplated by the developer. In the opinion of the witness, there is an adequate supply of small industrial lots in Harford County which has contributed to the lack of demand for the subject sites.

Mr. Dixon described the development proposal if R3 rezoning is granted. The entire parcel would be developed as single family, detached dwellings consistent with the concept plan introduced as Petitioner's Exhibit 10. The witness described the road network proposed and indicated that 14 acres of the parcel would be dedicated for recreational use. Additionally, the entire parcel would be brought within the jurisdiction of the Riverside Community Association.

The witness concluded by stating that the property is far more suitable for residential purposes than industrial purposes. Additionally, had Bata known the topographical constraints related to this property, it would not have sought rezoning in 1989.

Mr. Tom O'Laughlin appeared and qualified as an expert in site plan design. The witness stated that he had been involved as a professional in the development of the Riverside community for many years.

The witness described a number of conceptual plans that had been prepared over the years. He pointed out that it was not until 1990, after the 1989 comprehensive zoning review, that a wetland delineation was performed. That delineation indicated that the area of non-tidal wetlands on site was approximately 30% larger than previously known or anticipated.

The witness stated that, in 1988, it was still common for various agencies to grant approvals to disturb wetlands during the development process, however, at present, it is virtually impossible to obtain such approvals. The witness felt that it was impossible to anticipate in 1988 that permitting agencies would become so strict in granting approvals in the future. Mr. O'Laughlin also explained that 13 industrial lots were created in concept on the subject parcel. He explained that some of the lots could be combined into larger lots, but, because of differences in elevation, larger buildings could not be built on those combined lots. Additionally, because the larger lots would contain large areas on undevelopable land, they would not necessarily be more desirable.

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Mr. Wes Guckert appeared as an expert traffic planner. Mr. Guckert described his analysis of the traffic impacts of the proposed residential development. Based on his analysis, Mr. Guckert concluded that traffic associated with a residential use would be 20-24% of that associated with an industrial use at this location.

Next to testify on behalf of the Applicant was Bernard Page, admitted as an expert real estate appraiser. Mr. Page prepared an analysis of the subject parcel identified as Petitioner's Exhibit 16. In analyzing the Applicant's sales of properties in the market area extending along Interstate 95 from Baltimore to Cecil counties, pre-1988 sales of small (under 10 acres) lots represented 45% of all sales. Since 1988, small lot sales have dropped to 18% of total sales. Based on Mr. Page's analysis, the absorption rate for the 13 lots on the subject parcel is 14 years.

Mr. Page opined that a mistake was made by in rezoning the property to GI in 1989. He said it was unknown at the time that the trend for smaller lot sales which existed prior to 1988 would not continue. Additionally, he believes the R3 classification would be entirely appropriate for this parcel given the location, proximity to the remainder of the Riverside residential development and the environmental and topographical constraints existing on the property.

Mr. Denis Canavan appeared as an expert in the field of land use, planning and zoning. Mr. Canavan was of the opinion that a mistake was made in 1989 in rezoning the parcel GI. In 1989 it was unknown that it would be difficult or impossible to obtain approval to disturb wetlands. It was unknown in 1989 the extent of the wetlands existing on the property. As a result, it was unknown and could not have been known, that only small lots could be developed and that the demand for small industrial lots would decrease so dramatically. Mr. Canavan pointed out that these lots remain unsold after 7 years of marketing efforts. In the opinion of the witness, the County Council could not have been aware of any of these facts, and further, that had these facts been known in 1989, the property would not have been rezoned.

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Mr. Canavan opined that R3 zoning was appropriate for the subject parcel. Relying on the expert opinion of Mr. Wes Guckert, a prior witness, Mr. Canavan indicated that the traffic impact of a residential development would be dramatically less intense than that of an industrial development. In conclusion, Mr. Canavan stated that rezoning the parcel to R3 would be consistent with the master land use plan designation for the subject property, medium intensity, and the residential uses conducted on surrounding properties.

Mr. Tony Oleszczuk appeared in support of the rezoning. The witness is the current president of the Riverside Community Association and he stated that the Association fully supported the rezoning of the property to residential uses.

Arden Holdredge, Director of the Harford County Department of Planning and Zoning testified. Ms. Holdredge indicated that the Department had prepared a staff report in this case wherein the Department advised against a rezoning and indicated that the Council had before it in 1989 the then known facts regarding the property. If facts were incorrect or in error, the error was the fault of the Applicant. However, Ms. Holdredge admitted that, in her opinion, R3 zoning was appropriate for this property and that, if this request were part of the comprehensive rezoning, the Department would not oppose such a rezoning request. Ms. Holdredge also stated that during the 1989 comprehensive zoning study, the presence of wetlands on this property was considered only in a general sense since no site specific studies had been performed on the site.

Denise Bradford Carnaggio testified in opposition to the request. Ms. Carnaggio is the Economic Development Coordinator for the Harford County Department of Economic Development. Ms. Carnaggio referenced a March 30, 1995 letter sent by her to the Department of Planning and Zoning. In that letter, the Office of Economic Development stated that the property was a "premier industrial location" and that BLC Properties, Inc. has been very successful in attracting small users to the Harford County area. Additionally, the letter states that if the property were rezoned, only 19.4 acres of GI land would remain available in the Riverside Business Park. In testimony, Ms. Carnaggio stated that several prospective purchasers had expressed an interest in sites on the subject property in recent months.

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Mr. John Dixon was called as a rebuttal witness. He stated that the proximity of this parcel to the Riverside Business Park was irrelevant in that there is no physical connection between the two developments. He pointed out that the subject property could never be developed as a business campus because there can be no main access point. Mr. Dixon also stated that the property was not "ready to go" as alleged by the Office of Economic Development since no utility or road facilities have been installed. Mr. Dixon again stated his opinion that there simply was no market for these industrial sites.

CONCLUSION:

The Applicant has alleged that a mistake was made during the 1989 comprehensive zoning process in that the County Council did not have before it all of the correct facts regarding the subject property or relied on incorrect facts or assumptions which led to an improper zoning classification. Admittedly, it was the developer who requested the rezoning in 1989, however, the Applicant claims that it also was not aware of all of the correct facts regarding the property when it made its request to rezone the property.

In Maryland, there is a strong presumption of correctness of original zoning and comprehensive rezoning. To sustain a piecemeal change in zoning, strong evidence of mistake in the original zoning or comprehensive rezoning...must be produced. Stratakis v. Beauchamp, 268 Md. 643, 304 A.2d 244 (1973).

Perhaps the leading case regarding requests for rezoning based on mistake is Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975), wherein the Court of Special Appeals laid out the basic principles what has become known as the "Change-Mistake Rule". The Court offered the following guidance:

"It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council...

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Because facts occurring subsequent to comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning." Boyce, supra.

At the time of the comprehensive zoning in 1989 the Council had facts before it indicating that a trend for small lots had emerged prior to 1988. Neither the Council nor the Applicant could have known at that time that such a trend would not continue in the future making these particular lots largely unmarketable. There was no site specific plan prepared delineating existing wetlands, therefore, neither the Council nor the Applicant knew that significant occurrences of wetlands on the property would reduce by nearly one-half, the development envelope of this property. Similarly, even if the Council had been aware of the presence of significant areas of wetlands, in 1989 it was still possible to obtain permits to disturb those areas, unlike today's environment which would largely prohibit such disturbance.

The Hearing Examiner is satisfied that a mistake occurred warranting a rezoning of the property. Additionally, based on all of the evidence, R3 zoning, the prior designation of the property appears entirely appropriate for the subject parcel. R3 zoning will, in fact, result in negligible impact to surrounding properties in comparison to the potential impacts associated with a large industrial development. The Hearing Examiner recommends therefore, that the request of the Applicant to rezone the subject parcel from G1 to R3 be approved.

Date July 14, 1995

William F. Casey
William F. Casey
Zoning Hearing Examiner